

## § 20.76

301 *et seq.*), or the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g.) travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108.

(c) This subpart does not preclude an employee from requesting waiver of a salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the Government Accountability Office in accordance with procedures prescribed by the Government Accountability Office. Similarly, in the case of other types of debts, this subpart does not preclude an employee from requesting waiver, if waiver is available under any statutory provisions pertaining to the particular debt being collected.

[52 FR 3772, Feb. 5, 1987, as amended at 72 FR 37098, July 9, 2007]

### § 20.76 Definitions.

(a) *Disposable pay* means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. Agencies must exclude deductions described in 5 CFR 581.105 paragraphs (b) through (f) to determine disposal pay subject to salary offset.

(b) As used in this subpart, the terms *claim* and *debt* are deemed synonymous and interchangeable. A *debt* means an amount owed to the United States from sources which include loans insured or guaranteed by the United States and all other amounts due the United States from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interest, fines and forfeitures (except those arising under the Uniform Code of Military Justice), and all other similar sources.

(c) *Employee* means a current employee of an agency, including a current member of the Armed Forces or a Reserve of the Armed Forces (Reserves).

(d) *Paying agency* means the agency employing the individual and author-

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izing the payment of his or her current account.

(e) *Credit agency* means the agency to which the debt is owed.

(f) *Salary offset* means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee without his or her consent.

(g) *FCCS* means the Federal Claims Collection Standards jointly published by the Justice Department and the Government Accountability Office at 4 CFR 101.1 *et seq.*

(h) *Waiver* means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to an agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, 5 U.S.C. 8346(b), or any other law.

[52 FR 3772, Feb. 5, 1987, as amended at 72 FR 37098, July 9, 2007]

### § 20.77 Agency responsibilities.

(a) Each Department of Labor agency which has delinquent debts owed under its program and administrative activities is responsible for collecting its claims by means of salary offset, in accordance with guidelines established by the Chief Financial Officer.

(b) Before collecting a claim by means of salary offset, the responsible agency should be satisfied that salary offset is feasible, allowable and appropriate, and, as otherwise provided in these regulations, must notify the debtor of the Department's policies for collecting a claim by means of salary offset.

(c) Whether collection by salary offset is feasible is a determination to be made by the creditor agency on a case-by-case basis, in the exercise of sound discretion. Agencies shall consider not only whether salary offset can be accomplished, both practically and legally, but also whether offset is best suited to further and protect all of the Government's interests. In appropriate circumstances, agencies may give due consideration to the debtor's financial condition, and are not required to use offset of the full or partial amount of the claim in every instance in which there is an available source of funds.

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(d) Before advising the debtor that the delinquent debt will be subject to salary offset, the agency head (or designee) responsible for administering the program under which the debt arose shall review the claim and determine that the debt is valid and overdue. In the case where a debt arises under the programs of two or more Department of Labor agencies, or in such other instances as the Chief Financial Officer, or his or her designee, may deem appropriate, the Chief Financial Officer, or his or her designee, may determine which agency (or agencies), or official (or officials), shall have responsibility for carrying out the provisions of this subpart.

(e) Agencies may not initiate offset to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the right to collect the debt were not known and could not reasonably have been known by the official of the Agency who was charged with the responsibility to discover and collect such debts. When the debt first accrued should be determined according to existing laws regarding the accrual of debts, such as under 28 U.S.C. 2415.

### § 20.78 Notifications.

(a) The agency head (or designee) of the creditor Labor Department agency shall send appropriate written demands to the debtor in terms which inform the debtor of the consequences of failure to repay claims. In accordance with guidelines as may be established by the Chief Financial Officer, a total of three progressively stronger written demands at not more than 30-day intervals will normally be made unless a response to the first or second demand indicates that a further demand would be futile and the debtor's response does not require rebuttal. In determining the timing of the demand letters, agencies should give due regard to the need to act promptly so that a debt to be collected by salary offset will be recovered during the employee's anticipated period of employment with the Government.

(b) In accordance with guidelines as may be established by the Chief Financial Officer, the creditor Labor Department agency shall send (at least 30

days prior to any deduction) written notice to the debtor, informing such debtor as appropriate:

(1) Of the origin, nature and amount of the indebtedness determined by the agency to be due;

(2) Of the intention of the agency to initiate proceedings to collect the debt by means of deduction from the employee's current disposable pay account;

(3) Of the amount, frequency, proposed beginning date, and duration of the intended deductions;

(4) Unless such payments are excused in accordance with the FCCS, of the creditor agency's policy concerning assessment of interest, penalties, and administrative costs;

(5) Of the employee's right to inspect and copy Government records relating to the debt or, if the employee or his or her representative cannot personally inspect the records, to request and receive a copy of such records;

(6) If not previously provided, of the opportunity (under terms agreeable to the creditor agency) to establish a schedule for the voluntary repayment of the debt or to enter into a written agreement to establish a schedule for repayment of the debt in lieu of offset. The agreement must be in writing, be signed by both the employee and the creditor agency, and be documented in the creditor agency's files (4 CFR 102.2(e));

(7) Of the employee's right to a hearing conducted by an administrative law judge of the Department of Labor, if a petition is filed as prescribed by the Department of Labor. In the event the debtor is an employee working in the Office of Administrative Law Judges, the notification shall inform such debtor of the right to elect to have the review of the agency's determination heard and decided by a person who is not in the Office of Administrative Law Judges, and not under the supervision and control of the Secretary of Labor; in such a case, all provisions in this subpart will otherwise apply, unless stated otherwise in the notification;

(8) Of the method and time period for petitioning for hearing;

(9) That the timely filing of a petition for hearing will stay the commencement of collection proceedings,